224

1955.

File No. 7492/36

P.W

DEPARTMENT

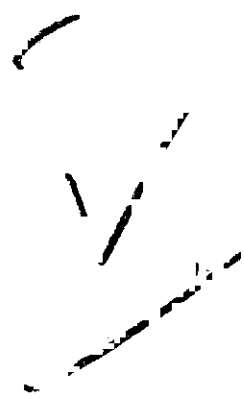
& BRANCH (II)

Subject:— Liens

Permanent Establishment on their transfer to work-charged Establishment.

Retension of —

A [K]



File No. 7492/36 — E (II)

Hd. Sectt. Slip. 24 A

J H 3 —50,000—5.34
No. 2108, dated 22-6-22.]

Correspondence

Sectt 78 A e

DOCKET SHEET (B)

Subject:—

File No. 7492/36

P.W DEPT.

C BRANCH. (II)

References:—

Date.	To whom sent.	Notes instructions,

*Typed on the reverse

*

Below letter No.G-55 dated 28th May 1945 from the Executive Engineer, Bijapur Division, regarding retention of lien of officiating Subordinates on the permanent establishment ~~xxx~~ on their transfer to the work-chargdd posts.

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No.G-55. Public Works Department,
Belgaum, 29th June 1945.

Copy forwarded, with compliments, to the Secretary to Government, Public Works Department, Bombay.

2. According to the existing orders, a Subordinate on thr work-charged establishment promoted to the permanent establishment is to be treated as a fresh recruit and given the same rate of pay as is admissible to a person directly appointed to the permanent establisnment.

3. In view of this the Subordinate referred to above would lose all claims of his previous officiating service on the permanent establishment as he holds no lien on the permanent establishment on his transfer to the work-charged post as explained by the Executive Engineer in his para I.

4. In the above circumstances the Undersigned recommends the Executive Engineer's proposal to extend the benefit of B.C.S. Rule 18-B in respect of such of the Subordinates who would have been confirmed in their appointments but for the embargo on confirmation due to reservation of vacancies for candidates with approved service.

5. Early orders are requested.

Id/-
Superintending Engineer, S.C.

V.M.T.

*Letter No.G-55 dated the 28th May 1945 from the Executive Engineer, Bijapur Division, to the Superintending Engineer, Southern Circle, Belgaum, regarding Employment of Officeating staff on the work-charged establishment.

"One Mr.M. S. Sankannavar, officiating karkun, on the permanent establishment has been selected for appointment as Survey maistry on work-charged establishment, on the Lift Irrigation Scheme at Korti in view of his experience of large irrigation tank work and also the knowledge of surveying and levelling gained by him. As per rule 18 B of B.C.S.R. Manual Volume I such, a Government Servant while holding a post, pay of which is charged to works does not retain his lien on officiating post. It is however necessary in the interest of work to appoint him as a Survey Maistry on work-charged establishment and I have accordingly issued orders of appointment. The karkun will however not retain lien on his officiating post as pointed out above and hence after reversion he will have no claim to his original post. He will also lose seniority unless his lien is retained on the officiating post while on deputation as Survey Maistry.

2. It is proposed therefore that officiating persons on the permanent establishment, who would ordinarily have been confirmed in their posts but for the orders issued in G.R. (Political and Services Department) No.4083/34-IV dated 25-8-1943, should be allowed the benefit of rule 18 B ibid though their appointment is not substantive on permanent establishment. Otherwise such men, who are promoted to higher work-charged posts in the interest of work due to non-availability of experienced technical staff may suffer.

may suffer.....

may suffer. Government may please be approached to in the matter, if necessary.

3. There are likely to be some more cases of the kind and concession, if granted, will be held to be applicable to all such cases.

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7492/36/21583.

P.W.Deptt.

E.B.(II).

In the circumstances stated the S.E.,S.C. recommends the Ex.Engr., Bijapur Dn's proposal that offg. persons on the pt.estabt., who would ordinarily have been confirmed in their posts but for the embargo on confirmation due to reservation of vacancies for candidates with approved war service (C.R.,P&A S.D. No.4083/34-IV, dated the 25-8-43) may be allowed the benefit of B.C.S.R. 18-B re: retention of their lien on such posts on their transfer to other posts through their ~~transfer to other~~ apptts. on the pt. estabt. are not substantive.

2. In B.C.S.R. 18-B it is laid down that unless his lien is suspended under B.C.S.R. 19 or transferred under B.C.S.R. 21, a Govt. servant holding substantively a pt. post retains a lien on that post.

(a) while performing the duties of that post;

(b) while on foreign service, or holding a tempy. post, or offg. in another post, or holding a post the pay of which is charged to works or contingencies;

(c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;

(d) while on leave; and

(e) while under suspension.

It is for consideration whether the S.E., G.Cle recommendation may be accepted in u.o. consultation with the F.D.

Id/-
27-7-45.

I think the G.E's recommendation may be accepted.

Id/-
30-7-45.

u. o. to the F.D. dated 30th July 1945.

Finance Department (C).

According to B.C.S.R.9(31) lien means the title of a Govt. servant to hold substantively a permanent post. B.C.S.R.16A states that a Govt. servant acquires a lien only on his substantive appointment on a permanent post. It is clear from the above provisions that the P.W.D. proposal to confer the right of 'lien' on a govt. servant officiating in a permanent post is contrary to the definition of the term 'lien' itself.

2. The intention behind the P.W.D. proposal is to relieve the hardship in cases like those referred to by S.E.S.C. It is pointed out that a Govt. servant has to officiate in a permanent post since he cannot be confirmed in it in view of G.R.,P.&S.D. No.4083/34-IV, dated 25-8-43; and if the officiating Govt. servant is transferred to a work-charged establishment in the interest of administrative efficiency he cannot claim the benefit of his previous service in the permanent post towards pay, etc. on retransfer to the permanent work establishment, as work-charged service in such a case constitutes a break in service. (vide para. 6 of G.R.,P.W.D., No.2648/36 dated 25-9-43). Please see G.R., No.3599/33, dated 18th August 1943 and Note 2 below B.C.S.R. 19. The difficulty can be removed in

some.....

some cases by the device of Provisionally substantive appointments and in view of corrn. slip No.193 dated 15th Octr. 1942 which amends B.C.S.R. 16B, the Govt. servant will retain the provisional lien even when transferred to a work-charged post. Again, as largex number of work-charged posts have recently been made temporary or permanent cases of similar hardship will x not arise so frequently.

3. It follows from para. 1 above that the P.W.D. proposal questions well-established principles on lien which are embodied in the rules and cannot be supported in this Deptt. The P.W.D. may, however, be advised to adopt the course suggested in para. 2 above, if it is x not already being done.

Id/-
24-8-45

This requires further consideration. I am afraid the remedy suggested in para. 2 above is not feasible. If the men in question are given provisionally substantive status, it willbnot be possible to remove them from their posts to make room for war candidates, because a provisionally substantive man as has been recently ruled, can be removed or reverted only if the permanent holder requests. There are no permanent holders in the case of the posts in question and provisional appts would be really permanent appts.

What is necessary is to tabulate the various disadvantages which those men suffer on account of the technical position. When this is done, we shall have to devise special means to protect the men in cases in which they are transferred to the work-charged establishment in the public interest. We can, for instance rule that the transfer will not constitute a break in service and that ~~increments~~ increment in the officiating

posts....

posts will be allowed in respect of the work-charged service in accordance with the principle of B.C.S.R. 44(c). In the matter of leave, there will be no particular disability when it is ruled that the transfer will not constitute a break. Perhaps, it may suffice simply to order that service in the work-charged posts should be treated as officiating service in the permanent posts for all purposes if and when the men are reappointed to the latter posts.

B

Id/-
29-8-45.

Finance Department (C).

Submitted with reference to the F.A.'s foregoing note.

2. The folbowing table indicates the disablities suffered by the persons in question and the action proposed to remove the disability.

Subject-matter	The disability suffered by the Government servant.	Suggestions on the necessary action.
1. Increment.	When the persons are retransferred from the work-charged service to officiate in permanent posts, they cannot count the previous officiating service in the permanent posts towards increments.	The suggestion made in the F.A's foregoing note would meet the needs of the case.
2. Pension.	According to rule 92(a) in P.W.D. Manual, Vol.I, members of work-charged establishment are entitled to wound or injury person and ~~gratuity~~ gratuity when admissable under the B.C.S.Rs. Please see also B.C.S.R. 183 under which such persons officiating in permanent posts can be eligible for the benefit of wound or injury or family pension are not based on number of years of duty, as loss of previous duty in permanent posts is suffered due to the transfer to work-	As there is no disadvantage in pension, no remarks are necessary.

Subject-matter	The disablity suffered by the Government servant.	Suggestions on the necessary action.
	To work-charged establishment. In view of B.C.S.R.240-A, officiating service in permanent posts of <u>these</u> men cannot count towards pension. Therefore, no disability is suffered by these men in pension.	
3. <u>Leave</u>.	Under note 2 below rule 2 in App. XLIV-A to the B.C.S.Rs., work-charged service constitutes a break. The persons concerned, therefore, lose the previous officiating service in permanent posts in respect of leave. While he may not be given special advantages, if any attaching to work-charged service, it seems only fair that he should be treated as if he had not been transferred to such service.	Please see rule 92(b) in P.W.D. Manual, Vol.I. The rate and limit of 'earned leave' continue to be the same on work charged establishment. But no provision is made for leave on M.C. or extraordinary leave in respect of work-charged service. If the Suggestion in the concluding sentence of F.A.'s note is adopted the period of work-charged service will count twards leave on M.C. for purpose of the note below Rule 13 in the R.L.Rules, 1935,-(~~App.XLIV-~~

Subject-matter.	The disability suffered by the Government servant.	Suggestions on the necessary action.
		(App. XLIV-A to the B.C.S.Rs) This will be not only relieving the hardship, but granting a concession which is uncalled for. Orders to the effect that the work-charged service should constitute a break will be adequate.
4. T.A. on Transfer.	Under B.C.S.R. 488, transfer t.a. is not admissible if the Govt. is not in receipt of transit pay. Under B.C.S.R.100-A, joining time and consequently joining time pay is inadmissible to these persons in respect of transfers to and from work-charged service. Thus, they are ineligible for transfer t.a. for both the transfers, if they could be confirmed, transfer t.a. would be admissible.	P.W.D. has recently passed orders providing for t.a. in regard to transfers of temporary men between work-charged and regular establishments. These orders will presumably cover the case of these persons. If so, no action is necessary.
5. Joining time and transit pay.	B.C.S.R.100-A does not provide for transit pay in such cases, so far as the transfer to and from the work-charged establishments is concerned. On other P.W.D. papers, the proposal to give	The case of these persons is different from an ordinary Govt servant who is temporary, since these persons could be confirmed but for the

Subject-matter.	The disability suffered by the Government servant.	Suggestions on the necessary action.
	give transit pay to temporary Government servant in respect of transfers between work-charged and regular establishments was dropped.	but for the embargo in favour of war candidates. It would suffice if orders are issued to the effect that if the and when the men are re-appointed to officiate in the permanent posts, they will be eligible for transit pay for the transfers to as well as from work-charged posts on the scale laid down in B.C.S.R. 1 100-A.

). While incorporating the foregoing suggestions in the draft rders, the P.W.D. may be requested to make it clear that their cope is confined, only to those Govt. servants officiating n permanent posts, who cannot be appointed substantively or n a provisionally substantive capacity to these posts in iew of G.R., P. & S.D. No. 4083/34-IV, dated 25th August 943. And xxx who are transferred to the work-charged xx xxx establishment in the public interest and not at their wn request:

d/-
8-9-45

3-10-45

We may advise that in the case of Government s ervants who answered to the discription at 'A' above , rders may be passed in the sense of 'B' on page

E(II) 9/10
7492/36
3358

Id/-
8-10-45.

C.O.R. to the P.W.D. dated 8-10-45.

Establishment:
Counting of Work-charged service as officiating service under certain conditions.
Orders regarding -

Government of Bombay.
Public Works Department.
Resolution No.7492/36.
Bombay Castle, 20th December 1945.

Endorsement by the Superintending Engineer, Southern Circle, No.C.55, dated the 29th June 1943, as under:-

X X X

"2. According to the existing orders, a Subordinate on the work-charged establishment promoted to the permanent establishment is to be treated as a fresh recruit and given the same rate of pay as is admissible to a person directly appointed to the permanent establishment.

"3. In view of this the Subordinate referred to above would lose all claims of his previous officiating service on the permanent establishment as he holds no lien on the permanent establishment on his transfer to the work-charged post as explained by the Executive Engineer in his paragraph 1.

"4. In the above circumstances the Undersigned recommends the Executive Engineer's proposal to extend the benefit of B.C.S.Rule 16-B in respect of such of the Subordinates who would have been confirmed in their appointments but for the embargo on confirmation due to reservation of vacancies for candidates with approved service.

"5. X X X . "

RESOLUTION. - Government is pleased to direct that persons who are required to be appointed in an officiating capacity in permanent posts because they cannot be appointed in a substantive or provisionally substantive capacity to these posts in view of Government Resolution, Political and Services Department, No.4083/34-XV, dated the [redacted] the 25th.....

25th August 1943, and who are transferred to the work-charged establishment in the Public interests and not at their own request, should be allowed to treat the work-charged service as officiating service in the x permanent posts for all purposes (leave, increment pension, etc.) if and when they are reappointed to the latter posts.

By order of the Governor of Bombay,

Id/-
21-12-45

(G. N. PANDIT),

Deputy Secretary to Government.

To

The Finance Department.
The Superintending Engineers of Circles.
The Special Officer (Electric Grid).
The Electrical Engineer to Government.
The Public Health Engineer to Government.
The Accountant General, Bombay (through the Finance Department)
The Director, Development Department Chawls.
The Executive Engineers of Divisions.

No. of 1945.

Copy forwarded for information and guidance to